

**REMARKS/ARGUMENTS**Claim Rejections - 35 USC §101

1. The Examiner rejected claims 1, 5-11 and 34-35 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Examiner stated: “In order to be considered patent eligible under 35 USC 101, a claimed process must contain a sufficient tie to a machine, article of manufacture or a composition of matter. In re Comiskey, 84 USPQ2d 1670 (Fed. Cir. 2007). In this case, the claimed invention does not have a sufficient tie to any machine, article of manufacture or a composition of matter.

2. Additionally, the Examiner rejected claim 1, 5-11 and 34-35 under 35 U.S.C 101 since it claims a piece of computer software (computer logic and GUI) that is not tied to a computer readable medium. The Examiner stated: “Data structures (computer logic or GUI) that is not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer (see MPEP 2106).”

**Applicants thank the Examiner for discussing this rejection on the phone with their Attorney on 3/26/2009. The Examiner stated that amending the claims to state that logic and GUI are contained in a computer readable medium would probably overcome this rejection. The Applicants have made just such amendments. The computer system claimed by this invention is described in great detail from page 6, line 17 to page 8, line 2. At this location the computer used in this invention is described as being of “conventional architecture”, and having “microprocessors 1702, each of which retrieves data and/or instructions from memory 1704 and executes instructions in a conventional manner.” Applicant submits that the computer system is a machine and the computer logic and GUI of this invention are embodied in computer-readable media meeting the requirements of 35 USC 101 as interpreted by In re Comiskey, *ibid*. Thus there is complete support for these amendments and no new matter has been added.**

Claim Rejections -35 USC § 112

3. The Examiner stated: “The term ‘any special characteristic’ in claim 1, 5-11 and 34-35 is a relative term which renders the claim indefinite. The term ‘any special characteristic’ is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. At this point the examiner can not determine the metes and bound of the limitation ‘special characteristic’.”

**First, this rejection is overbroad because the words “any special characteristics” only appear in Claim 34. Applicants respectfully request the Examiner to rescind this rejection as it pertains to claims 1, 5-11 and 35. In Claim 34, applicants have amended the word “any” to the word “a” thus satisfying this rejection. Examples of special characteristics are shown at page 12, lines 5-8.**

Claim Rejections -35 USC § 103

4. The Examiner rejected claim 1, 5, 8-9, 11 and 34 under 35 U.S.C. 103(a) as being unpatentable over Eckenwiller US 2003/0163292 in view of Sack Saver and further in view of Yamamoto US 5, 265,888.

The Examiner stated: “Claim 1: The Eckenwiller reference provides a teaching of a method to train a user to pack a retail carrier bag comprising of: providing logic in a computer to evaluate whether a plurality of virtual retail carrier bags having been properly packed with a plurality of virtual purchased item (see paragraph 57 and FIG 17 ‘efficiency’) said logic include packing criteria each virtual item having a specification including weight and dimension (see paragraph 24-25), representing plurality of virtual purchased item (see FIG 5) moving said plurality of virtual purchased item one at time within said computer in accordance with signals generated by said user (see FIG 3-5); evaluating in said computer how closely the packing of said plurality of virtual purchased item into said plurality of container conforms to said packing criteria (see paragraph 57 and FIG 17) and providing feedback to the user (see FIG 17 ‘efficiency’).

The Eckenwiler reference do not provide a teaching displaying a retail carrier bag, presenting a virtual retail carrier bag and moving virtual item into a plurality of carrier bag and the Eckenwiller reference do not explicitly teaches that the items are presented in a random order. The Yamamoto reference provides a teaching of presenting item in computer in a random order (see Abstract). Therefore, to provide a software that presented item in random order would have been obvious to one of ordinary skilled in the art, in view the teaching of Yamamoto, since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods (re-programming) with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention, i.e., one skilled in the art would have recognized that the random presentation used in Yamamoto would the item presentation of Eckenwiller to provide a solution from different item input presentation order. The Sack Saver reference provides a teaching of displaying a retail carrier bag, presenting a virtual carrier bag (see Sack Saver reference FIG item 3). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of a retail carrier bag, in order to provide a simulation of different retail environment.

Claim 5: The Eckenwiller reference provides a teaching of having a packing criteria that includes the number of item packed in each container (see paragraph 25 and 57). Claim 8: The Eckenwiller reference provides a teaching of feedback that includes the weight distribution amoong said plurality in each container (see FIG 17 ‘weight’).

Claim 9: The Eckenwiller reference provides a teaching of a feed that include the number of virtual purchased item in each container (see FIG 17 ‘#Parts’).

Claim 11 and 35: The Eckenwiller reference provides a teaching of a step of recording said feedback in a database accessible to an administrator through a computer network (see paragraph 38).”

**The Applicants thank the Examiner and his supervisor for discussing these rejections with the Applicants’ Attorney on the phone on 4/17/2009. The Attorney pointed out that that**

**the Eckenwiler reference has nothing to do with training and nothing to do with retail carrier bags.**

**The Eckenwiler reference is “a simulation program that determines a packaging configuration for placement of any math-based part/assembly into a selected shipping container for transfer of the [math-based part/assembly] to customer plants. The simulation program determines either automatically or manually an efficient packaging configuration for placement of any part/assembly into any appropriate shipping container.” See abstract.**

**The Yamamoto reference is a computer game. The game virtually presents a number of objects moving vertically down a computer screen which become erased when aligned with other objects which can be moved under the control of the player.**

**Yamamoto says nothing about presenting any objects serially and there would simply be no advantage to presenting the parts described by Eckenwiler serially. Finally, grocery bags would be of little or no use in the system described by Eckenwiler. Thus it could not be obvious to present the parts of Eckenwiler serially as described by Yamamoto utilizing the shopping bags of Sack Saver.**

**The Examiner stated that the rationale behind his rejection is that claims of the instant invention simply reference “purchased items”. The Attorney stated that this could be amended to “purchased simulated grocery items” and the Examiner agreed that this might make the claims allowable. So Applicants have amended the claims as discussed. Applicants have also amended the claims to show that the invention virtually displays a plurality of different purchased items and they are virtually presented to the trainee serially. Support for these amendments can be found at page 6, lines 1-6, page 8, lines 8-10 and in Figures 2-7 and claim 34a)i). No new matter has been added. Applicants submit that these amendments render claim 1, 5, 8-9, 11 and 34 allowable.**

**5. The Examiner rejected claims 6-7 under 35 U.S.C. 103(a) as being unpatentable over**

Eckenwiller US 2003/0163292 in view of Sack Saver, in view of Yamamoto US 5, 265,888 and further in view of Chowdury US 6,876,958.

The Examiner stated: "Claim 6-7: Eckenwiler does not provide a teaching where the quantifying comprises of determining that a crushable one of the items in one of the organized state is in a lower position within the carrier (Claim 6, 17 and 28) or determining the breakable one of the item in one organized state is in a lower corner position within the carrier (Claim 7,18 and 29). However, Chowdury provides a teaching where the quantifying is determined by the determining the fragile item be placed in a certain position in the container (see Chowdury col. 9: 14-31). Therefore, it would have been obvious for one of ordinary skilled in the art to include the feature of quantifying by the determining the fragile item be placed in a certain position in the container, as taught by Chowdury, because it would help the user be able to take into account possible damage (see Chowdury see 9: 15-20)."

**Applicants respectfully traverse these rejections. Obviousness in view of it Eckenwiler, Yamamoto and Sack Saver has been satisfied above. Since claims 6-7 depend from claim 5, Claims 6-7 should now also be allowable. The Applicants wish to point out that Chowdury invention includes methods of selecting cases in which to pack items in an item order and selecting the sequence and configuration of placement of items into the selected cases. One such method includes examining an order comprising a list of items to be packed, determining the cases available for packing, determining the minimum number of cases required for packing the items in the list of items to be packed, selecting a case to be packed with one or more of the items in the list of items to be packed, wherein said selecting a case comprises determining a desired average volume per case and selecting the smallest of the cases available to be packed that comprises a volume in excess of the average volume per case, and determining the configuration of placement in the case to be packed of items in the list of items to be packed. Such steps may be repeated until all items in the item list are selected and configured for packing.**

**This is an entirely different invention from the instant application. Moreover, it does not determine where fragile and breakable items should be placed. The section cited by the**

**Examiner simply talks about a layer limitation which is predetermined according to client and customer preferences.**

**The instant invention involves no item list or selection of cases or determining the sequence and configuration of placement of items into the selected cases. The instant invention only uses grocery bags and does not determine the sequence in which items are placed in the bags. In the instant invention the trainee determines the sequence in which items are placed in the bags. The present invention does not instruct the trainee where to pack individual items: it only determines whether the trainee has placed a crushable item in the proper place in the bag. There would be no advantage to combining the layer limitation feature of Chowdury with Eckenwiler, Yamamoto and Sack Saver.**

6. The Examiner rejected claims 10 and 34 under 35 U.S.C. 103(a) as being unpatentable over Eckenwiller US 2003/0163292 in view of Sack Saver, in view of Yamamoto US 5, 265,888 and further in view of Armington US 2001/0017023.

The Examiner stated: “Claim 10: The Eckenwiller reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags. However, the Armington reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags (see paragraph 75). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags, as taught by Armington, since it would allow the trainer to measure the efficiency of the student. Claim 34: The Eckenwiller reference provides a teaching of a GUI of a bag item and bag weight indicator (see FIG. 17), providing a computer linked means for a said person to manipulate said cursor (see FIG 1 item 12), providing specification for each different item, including weight and dimension (see paragraph 24-25), tracking a number of parameter for each training run including total weight of item and placed in each bag and whether each item were properly placed in said bag (see FIG 17 item ‘weight’ , ‘#parts’ , ‘Efficiency’), reporting these parameter to said person (see paragraph 38) and calculating a score for each run (see FIG 17 ‘efficiency’). The Eckenwiller

reference fails to provide a teaching of providing a computer generated GUI of a packing station; a simulation of plurality of different purchased item; a simulation of at least one packing bag; a simulation of at least one packing platform; a simulation of a conveyor belt traveling toward said packing station; an item vertical and horizontal rotate button; a new bag button; simulation of a grocery cart; allowing said person to rotate said purchased item, if necessary by clicking one or both of said rotate button with cursor; allowing said person to place at least one bag on said packing station by clicking on new bag button. The Sack Saver reference provides a teaching of a method of training of a person in the art of packaging purchased item comprising the step of: providing a computer generated GUI of a packing station (see Sack Saver item 6); a simulation of plurality of different purchased item (see Sack Saver item 1); a simulation of at least one packing bag (see Sack Saver item 3); a simulation of at least one packing platform (see Sack Saver item 6); a simulation of a conveyor belt traveling toward said packing station (see Sack Saver item 1); an item vertical and horizontal rotate button (see Sack Saver item 4); a new bag button (see Sack Saver item 2); simulation of a grocery cart (see Sack Saver item 6); allowing said person to rotate said purchased item, if necessary by clicking one or both of said rotate button with cursor (see Sack Saver item 4); allowing said person to place at least one bag on said packing station by clicking on new bag button (see Sack Saver item 2). Therefore, it would have been obvious to one of ordinary skilled in the feature of providing a computer generated GUI of a packing station; a simulation of plurality of different purchased item; a simulation of at least one packing bag; a simulation of at least one packing platform; a simulation of a conveyor belt traveling toward said packing station; an item vertical and horizontal rotate button; a new bag button; simulation of a grocery cart; allowing said person to rotate said purchased item, if necessary by clicking one or both of said rotate button with cursor; allowing said person to place at least one bag on said packing station by clicking on new bag button; as taught by Sack Saver, TheEckenwiller reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags. However, the Armington reference provides a teaching of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags (see paragraph 75). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature

of feedback that includes the total time taken by said user to pack all said purchased item into said plurality of virtual retail bags, as taught by Armington, since it would allow the trainer to measure the efficiency of the student. The examiner takes OFFICIAL NOTICE on the feature of done button, allowing said person that has finished packing all purchased item by clicking the done button, providing linking mean for said person to manipulate said cursor (input device) and cursor as being old and well known in the art of graphical user interface. Therefore it would have been obvious to one of ordinary skilled in the art to include the feature of done button and cursor because it would enable the user to provide game input information to the system.”

**Applicants respectfully traverse these rejections. Obviousness in view of it Eckenwiler, Yamamoto and Sack Saver has been satisfied above. Since claim 10 depends from claim 5, claim 10 should now be allowable. The amendments discussed with the Examiner were made to claim 34 also. Thus claim 34 should now also be allowable. In addition Applicants wish to point out that Armington describes a packaging system which includes a cushioning conversion machine for converting stock material into relatively low density cushioning material or dunnage and a packaging system controller. The packaging system controller provides packaging instructions related to a part or parts to be packaged and instructs the cushioning conversion machine to produce the cushioning material. In one aspect of the present invention the packaging system controller provides packaging instructions by retrieving a predetermined set of packaging instructions associated with a particular part. In another aspect of the Armington invention the packaging system controller provides packaging instructions by determining an optimized packaging methodology using one or more characteristics of the part or parts to be packaged. The packaging system also provides for automated inventory control and productivity monitoring.**

**This is another entirely different invention from the instant application. The instant invention involves no dunnage or cushioning material and no packaging system controller. There would be no advantage to combining the tracking system of Armington with Eckenwiler, Yamamoto and Sack Saver.**

No additional fee is due on account of the above amendments. However an extension fee for



response during the second month is due. This will be electronically paid on filing of this paper.

Reconsideration of this application and its early allowance are respectfully requested in view of the above presented amendments and remarks.

Respectfully submitted,

/David A. Belasco/

David A. Belasco  
Applicants' Attorney  
Registration No. 41,609

BELASCO JACOBS & TOWNSLEY, LLP  
6701 Center Drive West  
14<sup>th</sup> Floor  
Los Angeles, CA 90045  
Phone: (310) 743-1188  
Fax: (310) 743-1189